IN THE HIGH COURT OF JUDICAUTRE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

(222) **COMPANY PETITION NO. 173 OF 1999**

M/s. Laxmichand Cooverji & Co. ... Petitioners

Vs.

M/s. Eastern Overseas Ltd. ... Respondents

And

Nectiles Pvt. Ltd. ... Applicant

Mr. J..H. D'Silva for Petitioenr.

Ms. Shaikh with Mr. Gayatri Sharma i/by S.K. Srivastava & Co. for IIT Capital Services Ltd.

CORAM : A.M. KHANWILKAR,J.
DATED : JULY 15, 2005

P.C.

. Heard counsel for the Petitioner and counsels for the supporting creditors. None appears for the respondents though served. No reply has been filed on behalf of the respondent.

. The Petitioner had provided temporary tarpaulin monsoon shed at the request of the respondent company for the period between June, 1997 to October, 1997. The said work was executed by the Petitioner and the facility was availed by the respondent company without any demur. However, the respondent company failed to discharge its liability to pay charges amounting to Rs.1,71,340/-. As no payment was offered the Petitioner eventually issued statutory notice to

the respondent company. No response was given to the statutory notice. The Petitioner eventually filed this petition under Section 433 and 434 of the Companies Act on 7.12.1993. Before petition was taken up for hearing, respondents were duly served. As none appeared for respondent and no reply was filed petition cane to be admitted on 9.7.1999. The admission of the Petition has been subsequently published in newspapers as well as official gazette. Pursuant to publication, around 9 other creditors have supported the relief claimed in this petition. As mentioned earlier, inspite of notice none appears for the respondent or no reply has been filed. There is no material to rebut the legal presumption that the respondent company is unable to pay its debts to the Petitioner and claims of the supporting creditors. If it is so, this court has no option but to allow this petition in terms of Prayer Clauses (a) and (b). Accordingly, petition made absolute in terms of Prayer Clauses (a) and (b).

(A.M. KHANWILKAR,J.)